

RESPONSE TO RESTRICTION REQUIREMENT

In response to the Restriction Requirement, Applicant elects Species I. The election is with traverse. Applicant respectfully requests reconsideration of the Election/Restriction Requirement for at least the following reasons.

The Office Action asserts that the application contains claims to three patentably distinct species, identified by: (1) claims 1-10 and 16-19; (2) claims 11-14; and (3) claim 15.

At the outset, the M.P.E.P. very clearly teaches that species are never identified by claims. M.P.E.P. § 806.04(e) states that:

"Claims are definitions or descriptions of inventions. Claims themselves are never species. The scope of a claim may be limited to a single disclosed embodiment (i.e., a single species, and thus be designated a specific species claim). Alternatively, a claim may encompass two or more of the disclosed embodiments (and thus be designated a generic or genus claim). Species always refer to the different embodiments of the invention."

Here, the Office Action fails to identify any species as defined by different embodiments in Applicant's disclosure. Accordingly, the election requirement fails to comply with the M.P.E.P. and is therefore deemed to be facially defective.

Furthermore, the claims 1-19 are not directed to different "species" of anything. M.P.E.P. § 806.04 states that:

"Where an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct."

Here, the alleged "species" in the Office Action could not "fall within the scope of a

generic claim." Indeed, Applicant respectfully submits that it is apparent that a method of embedding a secondary signal, a method of detecting a secondary signal, and a method of storing a bitstream of a primary signal, are not "species" of anything!

Moreover, if the Examiner intended to issue a restriction requirement instead of the purported "election" requirement, Applicant would also traverse that as being clearly improper under M.P.E.P. §§ 803.01(I) and 808, as there could not possibly be a serious burden in examining all of the claims 1-19 in this application considering the fact that this application has already been subjected to four previous Office Actions!


Accordingly, for at least these reasons, Applicant respectfully traverses the election/restriction requirement, requests that it be withdrawn, and also requests that the all of the pending claims 1-19 be examined and allowed.

CONCLUSION

In view of the foregoing explanations, Applicant respectfully requests that the Examiner reconsider and reexamine the present application, allow claims 1-19 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

Respectfully submitted,

VOLENTINE & WHITT

By: 
Kenneth D. Springer
Registration No. 39,843

VOLENTINE & WHITT
11951 Freedom Drive, Suite 1260
Reston, Virginia 20190
Telephone No.: (571) 283.0724
Facsimile No.: (571) 283.0740